IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.RC.No. 7 of 2001(E)

SC.109/1996 of ASSISTANT SESSIONS COURT, SULTHAN BATHERY

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PARTIES:

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1. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

   BY PUBLIC PROSECUTOR, SRI C.K.SURESH

2. MUHAMMED S/O.MOOSA,
   THOTTIKKANDI, PANDIKKADAVU,
   EDAVAKA AMSOM.

   BY SRI.MUHAMMED (PARTY)

THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.C.No.7 of 2001

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Dated this the 11th day of September, 2007

O R D E R

Suo motu revision was taken over the judgment of the Assistant Sessions Judge, Sulthanbathery in S.C.No.109/1996 with respect to offence under Sections 451, 347, 461, 392 read with Section 397 I.P.C. It is the prosecution case that on 03/04/1994 at about 9.45 a.m, the accused together with another unidentified person committed house breaking by criminally trespassing into house No.II/444 belonging to PW1 and wrongfully restrained PW1 by tying her to a cot inside the house and committed theft of gold and silver ornaments and cash after breaking open a shelf, altogether valued at Rs.16,400/-.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 8 and Exts.P1 to P4. Of course, PW.1 has testified that on 03/04/1994 at about 9.30 a.m the incident took place. It is the case that she was dragged inside the room by two persons and that she was tied to the cot and closed her mouth with a lunky and took the key from under the bed and opened the shelf and took away two golden rings, a waist chain and some cash. They also removed her

bangles, ear-rings and subsequently they tied her to a chair. PW.2 is her husband. He has testified that he took PW.1 to the hospital thereafter. PW.3, Francis has stated that on the particular day at 10 a.m he saw the accused and another person walking through the road in front of the house of PW.1. According to him he saw the accused person at a distance of about 150 metres. PW.3 has no previous acquaintance with the accused. PW.7, the Sub Inspector who conducted part of the investigation has stated that tracker dog was brought to the scene, Finger Print Expert has also examined the scene of occurrence. PW.8 is the Circle Inspector who conducted the further investigation. He has stated that in the course of investigation, he felt suspicious and the accused was arrested, whom he showed to PW.1, who identified him. He could not receive any information as to the other accused and no articles allegedly robbed could be traced. It is also brought out that the accused is a person residing three kilo metres away from the place of occurrence. He has no previous antecedents.

3. As already noted, no finger print report was produced. The only evidence in the matter is the testimony of PW.1. The non recovery of

the articles allegedly stolen and the fact that the Investigating Officer could not get any information with respect to the co-accused and the fact that PW.3, who is not a person residing in the neighbourhood and who allegedly saw the accused at about 150 metres away, it was found that the prosecution version cannot be believed as such. In the circumstances, the court below found that the accused is entitled to the benefit of doubt. On a closer scrutiny of the evidence adduced, I find that no interference is called for. The investigation conducted in the matter is so sham and irresponsible. The revision is closed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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R.C.No.7 of 2001

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O R D E R

11th September, 2007